



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 7146-98

22 May 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 16 September 1991 for six years and subsequently extended that enlistment on several occasions. On 22 August 1993 you reported for duty at the Naval Recruiting District in Michigan.

In July 1995 an investigating officer (IO) concluded that you had engaged in a sexual relationship with a member of the delayed entry program (DEP) and recommended that you receive nonjudicial punishment (NJP). Subsequently the IO considered additional evidence but did not change his recommendation. On 25 August 1995 you received nonjudicial punishment for disobedience of a lawful general regulation by wrongfully engaging in physical contact with a person known to be a member of the DEP. The punishment imposed included forfeitures of pay totaling \$1,612 and a reduction in rate from MM1 (E-6) to MM2 (E-5).

In your appeal^f of the NJP you stated that the IO had a preconceived idea that you were guilty and, in effect, slanted the evidence to show that you were guilty. You contended that the DEP member was infatuated with you and made up the story about the affair after you rejected her advances. You pointed

out that she had mental problems and was discharged from the Navy based on an adverse psychiatric evaluation. Finally, you contended that others in your command had received lesser punishment for similar offenses. On 7 November 1995 your appeal was denied by the Commander, Navy Recruiting Command who stated, in part, as follows:

Ms. (B) alleges that you repeatedly engaged in sexual intercourse with her, resulting in pregnancy which she terminated by an abortion you allegedly offered to pay for. She mentions dates and offers the statement of witnesses. You argue that you were elsewhere on those occasions and, likewise offer witnesses, to corroborate your version of the events. Despite this conflicting evidence, we are still left with the fact that Ms. (B) accurately described your home, your bedroom, its furnishings, and the hotel room number and weather on the night of 25 February 1995, a night when you were in fact at that hotel as proven by a hotel receipt and admitted by you. In light of the detailed information she provided, your argument that she and her friends must have picked this information up by hanging around the recruiting office and listening to yours and Petty Officer's conversations is not credible. Under the circumstances, I find that the Commanding Officer had sufficient evidence to determine by a preponderance that you had committed the offense.

The commander also pointed out the differences between your case and the others you cited and concluded that there had been no disparate treatment and that the punishment you received was not too severe.

Subsequently, you were processed for an administrative discharge due to your commission of a serious offense. An administrative discharge board (ADB) met on 5 January 1996 and found that you had not committed misconduct and recommended that you be retained in the Navy. The ADB considered evidence that your accuser had been separated from recruit training based on a diagnosed depressive disorder and preservice suicide gestures.

On 19 March 1996 the commanding officer requested a "fault transfer" from recruiting duty. The CO pointed out that you had been counseled after receiving a speeding ticket for driving a government vehicle at 96 MPH, taking the vehicle to the shop and to your home without permission, and falsifying the vehicle log; received nonpunitive letters of caution after attending a recruit company graduation and checking out one of the female graduates, and other recruiting irregularities; and convicted by civil authorities of disorderly conduct.

You reported to your new duty station on 22 August 1996. Subsequently, you received NJP for disobedience and insubordination. Since then you have reenlisted and are a selectee for advancement to MM1.

The Board is aware that the standard of proof at NJP and at an ADB is a preponderance of the evidence and there is no requirement that the results of the NJP and the ADB be consistent. Further, in reaching his conclusion that you were guilty of the offense, the commanding officer would properly have considered your prior record of conduct and recruiting problems. The Board believes that there was sufficient evidence for the commanding officer to conclude at NJP, by a preponderance of the evidence, that you committed the offense. Therefore, the Board concluded that the commanding officer did not abuse his discretion when he imposed NJP. Further, the punishment imposed was not too severe given the nature of the offense.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director